IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 27.09.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

Writ Petition Nos.5856, 6891 & 23181 of 2006
& W.P.M.P.Nos.6342 & 6343 in W.P.No.5856 of 2006
W.P.M.P.Nos.16394, 16395 & 7471 in W.P.No.6891 of 2006
W.P.M.P.No.2 in W.P.No.23181 of 2006

Tamil Nadu Government Transport Retired
Employees Welfare Association,
Formerly known as (Tamil Nadu Transport
Employees Urimaigal Sangam)
Reg.No.2599/CNI
rep.by its General Secretary,
M.Rajagopal,25/14, Ponnambalam Salai,
K.K.Nagar, Chennai 600 078.
... Petitioner in W.P.No.5856/2006

State Transport and Transport Corporations'
Retired employees' Welfare Association,
(Reg.No.127 of 2001)
Rep.by its President,
No.2, Pallavan Salai,
(Kalai Aranga Valaagam),
Chennai 600 002. ... Petitioner in W.P.No.23181/2006

B.Nesamony ... Petitioner in W.P.No. 6891/2006

Vs.

Government of Tamil Nadu,
rep.by its Special Commissioner and
Secretary to Government,
Transport (RW) Department,
Fort St. George,
Chennai 600 009. ... Respondent R1 in W.P.No.5856/2006
... Respondent in W.P.No.23181/2006

The State of Tamil Nadu,
rep.by the Secretary to Government
Transport Department,
Fort St.George,
Chennai 600 009. ... Respondent R1 in W.P.No.6891/2006

The State of Tamil Nadu,
rep.by the Secretary to Government,
Finance Department,
Fort St. George, Chennai 600 009.
... Respondent R2 in W.P.No.5856/2006
... Respondent R2 in W.P.No.6891/2006

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The Director of Treasuries & Accounts,
Panagal Building, Jennis Road,
Saidapet, Chennai 600 015.
... Respondent R3 in W.P.No.5856/2006

Director of Pension,
Pension Pay Office,
No.807, V Floor, Anna Salai,
Chennai. 6
... Respondent R4 in W.P.No.5856/2006

The State Express Transport Corporation Ltd.,
rep.by its Managing Director,
Pallavan Salai,
Chennai 600 002. ... Respondent R3 in W.P.No.6891/2006

PRAYER IN W.P.No.5856 of 2006:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for the records of the 1st respondent in G.O.Ms.No.42 dated 27.05.2005 in so far as the applicability of para 5(a) and 5(b) relating to fixing of cut off date as 01.09.1998 for grant of pension under the said G.O.and quash the same in so far as the petitioner's Association is concerned and direct the respondents to forthwith extend the Government Pensionary benefits to the members of the Petitioner's Association who retired on or after 01.09.1998 in the light of the directions of the Hon'ble Supreme Court in Civil Appeal Nos.1444 and 1445 of 1999 dated 29.10.2003 and in the Review Petition Nos.648 and 649 of 2004 dated 01.02.2005.

PRAYER IN W.P.No.6891 of 2006:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, calling for all the connected and relevant records relating to G.O.Ms.No.42, Transport Department dated 27.05.2005 passed by the first respondent and quash the same in so far as paragraph 5(b) of the G.O. is concerned and direct the first respondent to sanction and pay to the petitioner, his Government pensionary benefits for the petitioner's Government service rendered in the erstwhile Tamil Nadu State Transport Department taking into account the cut-off date fixed as 01.04.1982 and pay his arrears of pension from 01.01.1988 as per the directions of the Hon'ble Supreme Court of India in its judgment dated 29.10.2003 in Civil Appeals Nos.1444-1445 with 1446-1452 of 1999 and C.A.No.8507 of 2003.

PRAYER IN W.P.No.23181 of 2006:

This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to quash G.O.Ms.No.42, dated 27.05.2005 issued by the Respondent Government after calling for the records from the Respondent inasmuch as para 5(b) is concerned, as illegal and unconstitutional and consequently direct the respondent to pay

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pension to all the employees of State Transport Corporations, who retired after 01.09.1998 for the services rendered by them in the Transport Department of the Government as per G.O.Ms.No.378, dated 18.04.1975, read with G.O.Ms.No.1028, dated 23.09.1995, as interpreted by the Supreme Court in 2003(10) SCC 503 with arrears with penal interest of 18% per annum.

For Petitioner in W.P.No.5856/06 : Mr. D.S.Rajasekaran
For Petitioner in W.P.No.6891/06 : Mr. D.Sadhasivan
For Petitioner in W.P.No.23181/06 : Ms. R.Vaigai
For Respondents : Mr. R.Viduthalai
Advocate General
Asst.by Mr.G.Sankaran
A.G.P.

O R D E R

These writ petitions are filed challenging G.O.Ms.No.42 dated 27.05.2005 passed by the Government in so far it relates to paragraph 5(b) and consequently to direct the respondents to pay pension to all the employees of the State Transport Corporations who retired after 01.09.1998 for service rendered by them in the Tamil Nadu State Transport Department as per G.O.Ms.No.378 dated 18.04.1975 read with G.O.Ms.No.1028 dated 23.09.1995 and in the light of the order of the Hon'ble Supreme Court in Civil Appeal No.1444 & 1445 of 1999 order dated 20.10.2003 and reported in 2003 (10) SCC 503 and subsequent review petition in Review Petition No.648 and 649 of 2004 dated 01.02.2005 along with interest at the rate of 18% per annum.

2. The writ petitioners in W.P.No.5856 of 2006 and W.P.No.23181 of 2006 are the registered Associations consisting of retired employees of the Tamil Nadu State Transport Department of the Government and the Tamil Nadu State Transport Corporations with the object of protecting the welfare and common interest of its members.

3. The writ petitioner in W.P.No.6891 of 2006 was appointed as a Conductor by the Director of Tamil Nadu State Transport Department, Chennai - 2 and he joined on 01.01.1971. Subsequently he was absorbed in the present State Express Transport Corporation Ltd., and retired from service on attaining the age of superannuation on 31.05.2001 and he has completed more than 10 years of government service as on 01.04.1982 and became eligible to get Government pension from 01.01.1988 on wards as per the judgment of the Hon'ble Supreme Court. The facts leading to filing of the present writ petitions as mentioned in the affidavit filed by the petitioners in support of their writ petitions are as follows:-

4. The erstwhile employees of the Tamil Nadu State Transport Department which were forming part of the Government Department and consequently the employees were treated as Government servants and were working for more than 10 years, were absorbed permanently in the Tamil Nadu State Transport Corporations after the year 1973,

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when the Corporations were created for various districts and ultimately it was on 15.09.1975, the Tamil Nadu State Transport Department was wound up and all assets and liabilities were transferred to the Tamil Nadu State Transport Corporations in the respective districts. It was at the time of absorption into the Tamil Nadu State Transport Corporations it was assured that they would continue to receive the same emoluments and enjoy the same conditions of 'Service' and privileges till such time the Tamil Nadu State Transport Corporations framed their own rules. As far as the employees were concerned they continued to function in the same place except that the name of the employer was changed as the Tamil Nadu State Transport Corporation. The change over from Government service to Corporation service was not a matter of choice of employees. As per G.O.Ms.No.1028 Transport Department, dated 23.09.1985 read with G.O.Ms.No.284 Finance Department dated 31.03.1980 wherein the cut-off date for absorption of employees in the Tamil Nadu State Transport Corporations was fixed on 01.05.1975 / 15.09.1975. It was stated that those employees who had put in not less than 10 years of net qualifying Government service as on 01.05.1975 / 15.09.1975 are entitled to get pro-rata Government pension with effect from the date of their absorption in the Tamil Nadu State Transport Corporations in addition to their wages in the Tamil Nadu State Transport Corporations. Accordingly, a settlement was arrived at along with more than 5000 employees during 1986 - 1989.

5. It is also stated, that at the relevant point of time, the Government has created several other Corporations also in respect of various sectors and departments and Government Order in G.O.Ms.No.378 dated 18.04.1975 while providing for pension / gratuity has also categorically stated that in addition to the pay in the public sector undertakings, the person who are deputed to the Corporations will be entitled to pension / gratuity earned by him in Government service prior to such absorption and if the qualifying service under the Government was less than 10 years, gratuity and death cum retirement gratuity allowance was payable. It was also stated that such persons are permitted to draw their pension / gratuity immediately on absorption in the Tamil Nadu State Transport Corporations. It was also stated in the said G.O.Ms.No.378 providing for computation of pension that in cases where an officer at the time of absorption has less than 10 years of service who is not entitled to pension, the payment of proportionate pension does not arise and he will be eligible to proportionate service gratuity in lieu of pension and death cum retirement gratuity based on length of service. It was in G.O.Ms.No.284 dated 31.01.1980 by superseding the earlier G.O. including G.O.Ms.No.378 dated 18.04.1975, the Government has said that pension in respect of eligible Government servants who were absorbed in the Tamil Nadu State Department Corporations would be calculated at the time of transfer but payable by the Government only after retirement of the employees from the Tamil Nadu State Transport Corporations and the payment of pension was suspended during his employment in the Corporation.

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6. It was also stated in the said G.O. that the employees at the time of absorption into the Tamil Nadu State Transport Corporations having less than 10 years of service in Government were not entitled for pension. Since the said G.Os. has fixed 01.05.1975 as a cut-off date for calculation of terminal benefits and the Corporation has issued a circular stating that option should be exercised before dated 28.02.1982 without giving a choice to the employees absorbed into the Tamil Nadu State Transport Corporation to go back into the Government service and also stating that failing option it will be deemed that the employees wish to continue in service of the Corporation. It was in those compelling circumstances an option had to be exercised.

7. The said G.O. which has fixed the cut-off date as 01.05.1975 apart from taking away the rights of pension etc., as stated above, was challenged before this court and in W.P.No.1917 and 1928 of 1980 by order dated 18.01.1983 the said G.O.Ms.No.284 dated 31.01.1980 was strucked down which was confirmed on appeal by the Division Bench in Writ Appeal No.522 of 1992 and 962 of 1993 on 16.09.1997 on the said appeals filed by the respondents.

8. In the mean time, the Government has passed G.O.Ms.No.1028 dated 23.09.1985 stating that the employees who were absorbed to the Transport Corporations who were erstwhile employed in the Tamil Nadu State Transport Department of the Government will be given the benefit of pension and gratuity namely an optee will be entitled to pension / gratuity earned by him in the Government service prior to absorption apart from the fact that will be entitled as per the Madras Liberalized Pension Rules, 1960, in addition to his pay in the public undertaking. It was also stated that such persons are entitled to draw their pension / gratuity earned in the Government service from the date of their absorption in the Tamil Nadu State Transport Corporations. It was stated that arrears of monthly pension from the date of permanent absorption should be paid immediately in respect of retired employees or legal heirs of the deceased employees. The employees who were absorbed to the Tamil Nadu State Transport Corporations and who have not got the requisite 10 years of service in the Tamil Nadu State Transport Department, as on 01.05.1975, filed W.P.No.6969 of 1992 etc., batch in which by an order dated 09.01.1992 this Court has held that the fixation of cut-off date 01.05.1975 was arbitrary and not related to actual absorption, since option for absorption was asked for, till 1982. Therefore, this Court has struck down the cut-off date fixed in the said G.O.Ms.No.1028. Simultaneously, another Union of Transport workers have also filed in W.P.No.1712 of 1988 on the same issue and that was also allowed on 22.07.1993 relying upon the order in W.P.No.6969 of 1990 dated 09.01.1992 holding that the cut-off date should be related to final option and as state above the cut-off date has extended upto 1982. As stated above it was against all the said orders when the appeals were filed in Writ Appeal No.522 of 1992 batch the Division Bench has dismissed all the Writ Appeals by the judgment dated 16.09.1997 holding that till the individual employees exercise their option on their volition they must be deemed to continue as Government employees and

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declaring that 1982 shall be adopted as a uniform date. The Government has further filed appeal to the Hon'ble Supreme Court which was dismissed on 29.10.2003 as reported in 2003(10) SCC 503 in the Government of Tamil Nadu and others Vs. M.Ananchu Ansari and others holding that the revised cut-off date in respect of all the employees of the Tamil Nadu State Transport Corporations who have opted from the Tamil Nadu State Transport Department shall be uniformly, 01.04.1982 irrespective of the actual date of option and further holding that as far as the payment of arrears of pension the same should be computed from 01.01.1988 onwards and directed the Government to extend the benefits to all the eligible employees within a period of four weeks from the date of the judgment. Not being satisfied with that, the Government has also filed review before the Honble Supreme Court and ultimately, the review petition was also dismissed on 01.02.2005 reported in 2005(2) SCC 332 granting four months time from the date of the judgment for implementation.

9. It was thereafter the Government has issued the impugned G.O.Ms.No.42 dated 27.05.2005. It was in that G.O. in paragraph 5 (a) it is stated that in respect of employees of the erstwhile Tamil Nadu State Transport Department absorbed in the Tamil Nadu State Transport Corporations who retired before 01.09.1998, they are entitled for pension as per the Hon'ble Supreme Court order, if they have put in the qualifying service of 10 years as on 01.04.1982. However, in paragraph 5(b) it is stated that in respect of the employees who retired after 01.09.1998, they will be paid pension only as per the scheme of the Tamil Nadu State Transport Corporation and they are not eligible for pension as per G.O.Ms.No.1028 dated 23.09.1985. The said the impugned G.O. namely clause 5(b) is stated to have been introduced for the reason that such of those employees who have retired after 01.09.1998 having been absorbed in the Tamil Nadu State Transport Corporations are to be paid pension as per the pension scheme of the Tamil Nadu State Transport Corporation issued in G.O.Ms.No.135 Transport dated 15.12.2000 by which the Tamil Nadu State Transport Corporation Employees Pension Fund Rules were framed and also with reference to Rule 7 of the Tamil Nadu Pension Rules.

10. According to the petitioners, Rule 7 of the Tamil Nadu Pension Rules does not support the action taken by the Government, in denying the pension for employees who were transferred to the Transport Corporations and retired after 01.09.1998 and there are many number of cases wherein even in respect of employees who retired from the Corporations before the Hon'ble Supreme Court Judgment but after 01.09.1998 the Government paid pension and there are atleast two instances of one V.Gopu and V.Chandran who have retired from the Madras Metropolitan Transport Corporation with effect from 15.12.2000 and 21.10.1998 were cited.

11. Further, according to the petitioners, the term in the Tamil Nadu State Transport Corporation Employees Pension Fund Rules including the term "Actual Service" is relevant only for calculation of pension for the employees of Corporation. According

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to the petitioners, even a reading of the Corporation Pension Rule shows that the service rendered under the Government before the employees were absorbed into the Tamil Nadu State Transport Corporations were excluded while calculating the pension under the Tamil Nadu State Transport Corporation service. Therefore, in effect clause 5(b) of the impugned Government Order takes away the right of pension of the employees absorbed from the department to the Tamil Nadu State Transport Corporation in respect of the services rendered by them in the Tamil Nadu State Transport Department of the Government which is illegal. The Government cannot absolve its obligation to pay pension to employees who retired after 01.09.1998, since the same is statutory obligation under the Tamil Nadu Pension Fund Rules along with the G.O.Ms.No.378 dated 18.04.1975 and the G.O.Ms.No.1028 dated 23.09.1995 as ultimately decided by the Hon'ble Supreme Court in the judgment reported in 2003(10) SCC 503. Otherwise, it is the contention of the petitioners that the impugned portion of the Government Order is not only violative of article 14, 16 and 21 of the Constitution of India and it is contrary to the judgment of the Hon'ble Supreme Court stated above.

12. It is also the case of the petitioners that by payment of pension to the Tamil Nadu State Transport Corporation Employees who were absorbed in the Tamil Nadu State Transport Corporations in respect of the service rendered by them in the Government while they were in the Tamil Nadu State Transport Department and the payment of pension to them in respect of the Services rendered in the Tamil Nadu State Transport Corporation as per the Transport Corporation Employees Pension Fund Rules does not mean it is a double pension and therefore it cannot be said to be against rule 7 of the Tamil Nadu Pension Rules.

13. On the other hand the respondents have filed counter affidavit including the additional affidavit.

14. While admitting that the erstwhile Tamil Nadu State Transport was wound up with effect from 14.09.1975 and its employees were permanently absorbed in the various Transport Corporations, the respondents would state that at that time there was an agreement entered as per section 18(1) of the Industrial Disputes Act, 1947 by which all the erstwhile Tamil Nadu State Transport Department Employees were treated as absorbed permanently into the Corporation Service with effect from 01.05.1975 in respect of all the Transport undertakings except the State Express Transport Corporation Ltd., for which the date was 15.09.1975 and thereafter they ceased to be the Government servants. According to the respondents, they have implemented the judgment of the Hon'ble Supreme Court in following manner namely:

> "a) The erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired before 01.01.1988 (or) after 01.01.1988 but before 01.09.1998 are entitled for pension, if they had put in the qualifying service

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of 10 years as on 01.04.1982 as per the Tamil Nadu Pension Rules.

b) As per clause 2(p)(ii) and clause 14(b) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules issued in G.O.Ms.No.135, Transport, dated 15.02.2000 and with reference to rule 7 of the Tamil Nadu Pension Rules the erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired after 01.09.1998 are entitled for pension as per the pension scheme of the State Transport Undertakings brought into force by the settlement under section 12(3) of the Industrial Disputes Act 1947 and they are covered under the rules and GOs applicable to them and therefore not entitled for the second pension as per G.O.Ms.No.1028, Transport, dated 23.09.1985."

15. The respondents would also state that with regard to the pensioners who retired before or after 01.01.1988 but before 01.09.1998 they have no objection for granting pension by treating the qualifying service as on 01.04.1982 but paying the amounts from 01.01.1988 but in respect of those who retired after 01.09.1998, there was a settlement under Section 12(3) of the Industrial Disputes Act, based on which the pension scheme was introduced to the employees of the Transport Corporations and inasmuch as the employees who retired after 01.09.1998 were governed by the Tamil Nadu State Transport Corporation Undertaking Pension Scheme and it is under the scheme of the Corporations while granting pension the services rendered by those employees in the erstwhile Government department were also taken into account. Therefore, compelling the respondents to pay pension to those employees separately in respect of the services rendered by them in the Tamil Nadu State Transport Department before their absorption into the respective Corporations in addition to the pension payable under the Corporation Pension Rules will amount to directing the respondents to pay pension two times in respect of the services rendered by these employees in Government department and therefore, according to the respondents, it is hit by Rule 7 of the Tamil Nadu Pension Rules.

16. According to the respondents, the settlement arrived under Section 12(3) of the Industrial Disputes Act, based on which the pension rule have been framed by the respective Corporations, G.O.Ms.No.1028 transport dated 23.09.1985 cannot be relied upon by the petitioners. It is further stated that in respect of employees retired after 01.09.1998 having 10 years qualifying service as on 01.05.1975 / 15.09.1975 the date on which they were absorbed in the Tamil Nadu State Transport Corporations are paid pension as per G.O.Ms.No.1028 dated 23.09.1985 provided the gross pension calculated notionally including the period of pensionable service rendered by restricting total eligible service of 30 years. The difference between gross pension and the amount already received by the individual for the service rendered with the Government or the pension eligible under the scheme whichever is less, is eligible

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pension under Rule 14(b) of the Tamil Nadu Transport Undertaking Pension Scheme. As per G.O.Ms.No.42, Transport, dated 27.05.2005 in respect of the persons who have retired after 01.09.1996, para 5 (b) of the Government Order, which provides for pension. It is also the case of the respondents that the members of the Association are drawing higher rate of pension on par with Government servants under the State Transport Undertakings Pension Scheme brought into force by settlement under Section 12(3) of the Act. Taking into account the entire service of the members both in the Tamil Nadu State Transport Department and the Tamil Nadu State Transport Corporation Service put together as per clause 5(b) of G.O.Ms.No.42 dated 27.05.2005, rule 14(b) is applicable only in cases who were on receipt of pension on completion of 10 years of qualifying service as on date of absorption in State Transport under taking namely 01.05.1995/15.09.1975 under G.O.Ms.No.1028 dated 23.09.1985.

17. Apart from that they are also eligible for pension under para 5(b) of the Tamil Nadu State Transport Undertakings Pension Scheme. Since the workers have voluntarily agreed for the settlement under Section 12(3) of the Industrial Disputes Act, which contemplates a comprehensive pension taking into account both services rendered in the Government Department and the subsequent Corporation, therefore in addition to that they cannot claim any further pension.

18. In additional counter affidavit filed dated 14th July 20006 by the Deputy Secretary to Government, Tamil Nadu State Transport Department, Chennai 9, it is stated that employees who were on the roles of the State Transport undertakings as on 31.08.1998 should have furnished option of joining new pension scheme or continue to be a member in the existing Employees Contributory Provident Fund Scheme within 3 months from the date of signing the settlement as per clause 9 of the settlement arrived under the Industrial Disputes Act, on 13.02.1999. The petitioner in W.P.No.5856 of 2006 who is the General Secretary and its Executive President have exercised their option for new pension scheme of Corporation and drawing pension and other benefits under the Transport undertaking pension scheme. The respondents would state that the Hon'ble Supreme Court has not given direction that 01.04.1982 must be taking into consideration for arriving at the minimum qualifying service of 10 years to be eligible for pension. The Apex Court has only given 01.04.1982 as a cut-off date for the limited purpose of assessing the requisite length of service of 10 years and not earned any pension. It is also the respondents' case that the Honble Apex Court has not given any direction to pay pension for the second time and as per the Tamil State Transport Corporation Employees Pension Fund Rules approved in G.O.Ms.No.135, Transport, dated 15.12.2000, if a member is eligible for pension under any other scheme, pension payable under the scheme shall be calculated in the following manner namely:

> "Gross pension shall be calculated normally including the period of pensionable service rendered with previous employer total eligible service shall be restricted to

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30 years the difference between the gross pension and amount already received by the individual for the service rendered with previous employer or the pension eligible under the scheme whichever is less shall be the eligible pension under the scheme."

19. Mr.D.S.Rajasekaran learned counsel appearing for the petitioner - the Tamil Nadu Government Transport Retired Employees' Welfare Association in W.P.No.5856 of 2006 submits that the G.O.Ms.No.42 dated 27.05.2005 in so far it relates to the applicability of paragraph 5(b) is in effect against the judgment of the Hon'ble Apex Court and subsequent order passed in review filed by the Government. When the Hon'ble Apex Court has taken 01.04.1982 as a date of option however, granting arrears from 01.01.1988 there is absolutely no reason to discriminate these petitioners who have also come under the same category. He would also further submit that after the Hon'ble Apex court has put to an end to the entire controversy, the present impugned order by imposing another cut-off date as 01.09.1988 on the basis that by applying the Supreme Court judgment and respondents have to pay pension for two times is illegal. By including the services rendered in the Government Department by the Corporation for pensionary benefits, in effect the pension earned by the erstwhile Government Department employees like petitioners who have subsequently been absorbed in the Corporations after its formation, are made to lose the pension already earned by them in the Government service. It is also his contention that even when the Hon'ble Supreme Court gave judgment, the 12(3) settlement as well as the Corporation pension scheme were in existence, if really it was the purpert to be interpreted differently, the Hon'ble Apex Court would have made it out explicit.

20. Mr.D.Sadhasivan learned counsel appearing for the petitioner in W.P.No.6891 of 2006 would submit that after the judgment of the Hon'ble Apex Court in which 01.04.1982 has directed to be taken as the date of option, but giving monetary benefits from 01.01.1988, order should be taken, as an order passed under article 142 of the Constitution of India by the Apex Court and the order has to be obeyed if not the respondents have to face the contempt. According to him, the Tamil Nadu State Transport Corporation has fixed 01.05.1975 as cut-off date while the State Express Transport Corporation has fixed 15.09.1975 the date on which the respective Corporations were formed and that was held to be arbitrary. It was on the basis that the option to the employees of the Tamil Nadu State Transport Department to the Tamil Nadu State Transport Corporations has not been completed till 1982 and therefore the cut-off date had no rational basis.

21. Even though the Honble Apex Court has held that the option date should be taken as 01.04.1982, the arrears were directed to be paid from 01.01.1988 by exercising its powers under article 142 of the Constitution of India and that was the date when the first writ petition was filed by the All Indian Trade Union Congress challenging the cut-off date and subsequently another writ

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petition in W.P.No.6969 of 1990 and after the writ petitions were allowed, the appeals filed by the respondents have been dismissed and it was seen that the Hon'ble Supreme Court has rendered its judgment on 29.10.2003 and subsequently dismissed the review on 11.12.2003. The learned counsel also contended that even the grounds of review filed by the respondents before the Apex Court, the respondents have made categorically clear that they are accepting the judgment of the Supreme Court and passing of the G.O.Ms.No.42 dated 27.05.2005 is totally against their express undertaking. According to him, the Corporation pension scheme is nothing but the pension scheme which were expected to be mandatorily implemented under the Employees Provident Fund and Miscellaneous Provisions Act and that does not take away the rights of the Tamil Nadu State Transport Department Employees who have subsequently opted to the Tamil Nadu State Transport Corporations, their accrued right of pension for the service rendered to the Government. It is also the case of the petitioners that the petitioners have never exercised their option for the Transport Corporations Pension Scheme but it was imposed. In fact the Government intended to invite a judgment from the Hon'ble Apex Court differently in respect of the persons who retired after the Corporation scheme to the effect that they are entitled for the benefits only on the retirement and the Hon'ble Apex Court has not expressed any opinion about that. The learned counsel also would submit that when the G.O.Ms.No.284 was quashed, the contents of the G.O.Ms.No.1028 dated 23.09.1985 are holding the field. The learned counsel has also referred to the 12(3) Settlement which is in one line and also stating that the scheme will be introduced latter. The 12(3) settlement itself is based on an idea to continue the pension scheme under the Employees Provident Fund and Miscellaneous Provisions Act. When the scheme was introduced in 1995, there the option was only to the Tamil Nadu State Transport Corporation Employees which includes the erstwhile Tamil Nadu State Transport Department employees who have absorbed into the Tamil Nadu State Transport Corporations, whether the option is under the pension scheme or under the Employment Provident Fund Scheme or under the State Transport Corporation Employees Pension Scheme. Therefore, the option was not for the purpose of giving up the pensionary service benefits of the erstwhile Tamil Nadu State Transport Department Employees as wrongly interpreted by the respondents now.

22. Apart from the fact that the petitioners have never exercised their option, the learned counsel would contend that the conduct of the respondents in posting all employees to be a party to the new pension scheme of the Corporations which according to him is irrational, illegal and passed based on totally irrelevant considerations. According to the learned counsel, as per the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, 14 (b) as implemented in G.O.Ms.No.135, Transport Department, dated 15.12.2000, Rule 14(b) applying for the Corporation Service benefits, which was formed under 12(b) Settlement under the Industrial Disputes Act. By applying the said rule 14(b) regarding the determination of pensionable service, the learned counsel has also demonstrated at least in respect of one employee stating that

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while calculating pension in the Corporation service, the pension received while in service in Government Department was deducted and computation arrived at and therefore, the very idea was not to deprive the persons like that of the petitioners who have been the erstwhile Tamil Nadu State Transport Department employees subsequently transferred into the Tamil Nadu State Transport Corporation. However, in the present G.O. that is being taken away on the assumption as if it is amounted to payment of double pension. The learned counsel would submit that the petitioner has retired from Corporation service on 31.05.2001 and as per the judgment of the Supreme Court, he is deemed to have been absorbed from 01.04.1982 but he is not getting pension on par with the Government pensioners on his retirement. According to him, the petitioner is entitled for the benefit of the Government service from 01.01.1971, the date on which he was appointed in the Tamil Nadu State Transport Department till 31.03.1982, when the petitioner is deemed to have opted to the Tamil Nadu State Transport Corporations as per the judgment of the Apex Court. However, the Government has not paid the terminal benefits in spite of the order passed by the Hon'ble Apex Court, instead passed the present impugned G.O. by taking away that right by virtue of para 5 (b) of the said order.

23. The learned counsel also would submit that while as per G.O.Ms.No.378 dated 18.04.1975 the erstwhile Tamil Nadu State Transport Department Employee who has opted to the Transport Corporation is eligible to pension/gratuity earned by him in Government service prior to such absorption and such amount is permitted to be drawn on the date of absorption into the Transport Corporation. However, the said G.O. was not implemented and subsequently another G.O.Ms.No.284 dated 31.03.1980 was introduced under which the pension earned by the absorbed Transport Corporation employee, for the service rendered in the Tamil Nadu State Transport Department and such amount was directed to be payable on the date of retirement of employee from the Public Sector Corporations. It was this G.O. Which was challenged before this court and in W.P.No.733 of 1980 and W.P.No.5774 of 1982 and this court by an order dated 05.08.1983 has quashed the said G.O. and that has become final. Infact the Hon'ble Supreme Court has also referred about the same in the judgment. It was there after G.O.Ms.No.1028 dated 23.09.1985 came to be introduced under which the benefit given in G.O.Ms.No.378 apart from granting pension as per Madras Liberalized Pension Rule were confirmed. According to the learned counsel, the said G.O.Ms.No.1028, which has not been taken away, under 12(3) Settlement is still applies in respect of service rendered in the Tamil Nadu State Transport Department. What is applicable under 12(3) Settlement is only relating to the Corporation service. In the purport of 12(3) Settlement the intention was to take away the service benefits rendered in the Government Department. If that was the intention, the employees would have opted to go back to the Government Department. On the other hand 12(b) settlement is silent about the same and has not taken away the service benefits earned in the Government Department and therefore after the 12(b) settlement based on which the

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Corporation Pension scheme has been formulated, in addition to the pension eligible to the erstwhile Tamil Nadu State Transport Department Employees like that of the petitioners for the service rendered in the Tamil Nadu State Transport Department as it is confirmed in G.O.Ms.No.1028 dated 23.09.1985, they are entitled for the pension as per the Corporation pension scheme in respect of the services rendered under the Corporation and therefore there was no question of any double pension paid. All these facts were before the Honble Apex Court.

24. The learned counsel also would submit that rule 7 of the Pension rule, 1978 only prohibits that a Government Servant shall not earn two pensions in the same service or post at the same time or by the same continuous service. In the present case, the petitioners' pensionary benefits for the service rendered in the Tamil Nadu State Transport Department from 01.01.1971 to 31.03.1982 is payable on the date of absorption namely on 01.04.1982 into the Transport Corporations as it is confirmed in G.O.Ms.No.1028 and there after namely from 01.04.1982 entitled for pensionery benefits for the service rendered under the Transport Corporations till the date of their retirement namely 31.05.2001 and therefore there was no question of any double payment of pension.

25. The learned counsel also would rely upon the judgment of the Supreme Court in State of Tamil Nadu and others Vs. V.S.Balakrishnan and others reported in 1994 Supl.3 SCC 204 to substantiate his contention that a Government servant cannot be deprived of his status as civil servants without his consent.

26. The learned counsel also would submit that in view of the above said position the petitioner is entitled to pension for the service rendered in the Government Department apart from the Corporation Pension scheme for the service rendered in the Corporation and the alteration of the said legal position by the impugned G.O. is only against the judgment of the Honble Apex Court.

27. M/s.Vaigai learned counsel appearing for the petitioner in W.P.No.23181 of 2006 has taken me to various portions of the Honble Apex Court judgment reported in 2003(10) SCC 503 namely the Government of Tamil Nadu and others Vs. M.Ananchu Asari and others. Learned counsel would submit that the Honble Apex Court after considering the entire facts has ultimately directed the respondents herein who were the appellants to take steps to extend the pensionary benefits to the eligible employees by fixation of cut-off date as 01.04.1982 as an appropriate date and also stating that the retired employees will be entitled for arrears of pension from 01.01.1988.

28. According to her, while the Supreme Court judgment is categoric and clear, the impugned G.O.Ms.No.42 dated 27.05.2005 by creating a new clause namely clause 5(b) by relying on the provisions of the Tamil Nadu State Transport Corporations Employees

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Funds Rules imposing a new cut-off date of 01.09.1998 and the same is uncalled for. All the erstwhile Tamil Nadu State Transport Department employees who have been absorbed into the Transport Corporations are deemed to have been in Government Service till the cut-off date mentioned by the Supreme Court namely 01.04.1982. Learned counsel also has taken me the various G.Os. namely G.O.Ms.No.378 dated 18.04.1975, G.O.Ms.No.284 dated 31.03.1980, G.O.Ms.No.1028 dated 23.09.1985 to show as to how as per the G.O.Ms.No.1028, the rights conferred under G.O.Ms.No.378 has been restored along with certain other benefits also. The learned counsel would also contend that when once the right of pension has accrued in respect of the erstwhile Tamil Nadu State Transport Department employees who were absorbed in the Transport Corporations and that has in 1982, while implementing judgment of the Supreme Court by virtue of the impugned G.O.Ms.No.42, the right accrued is retrospective taken away which is illegal and it is against the very basis of the judgment of the Apex Court. She would also rely upon the various judgments of the Apex Court to substantiate her contention that by administrative order, the respondents are attempting to supersede the Supreme Court judgment. In the present case, the judgment of the Supreme Court is not merely declarative in nature but it is a decree as per article 142 of the Constitution of India and the passing of the G.O. itself is a clear contempt.

29. According to the learned counsel, the pension scheme formulated by the Transport Corporation under 12(3) Settlement is contractual and it is the trust fund from which the amounts are paid whereas in respect of the Government pension it refers from the consolidated fund and therefore pension earned in the Government service is totally different from the pension granted under the scheme of the Transport Corporations by way of a trust which is totally different and they cannot be mingled together. She would also contend that the Corporation Pension scheme is traced from the Employees Provident Fund Act and when a change over was made from the scheme under the Employees Provident Fund Act to that of the Corporations Pension Scheme an option was asked for. The Provident Fund Act does not cover the Government servants and it applies to undertakings and Corporations. Therefore, the services of the Government servants are not touched by the Employees Provident Fund Act or the Provident Fund Scheme of the Corporations. According to her, the pension scheme of the Corporations formulated by the Transport Corporation was only in lieu of the scheme already available and bound to be followed under the Employees Provident Fund and Miscellaneous Provisions Act and therefore it is misnomer to state that the Corporation Pension Scheme is to take away the pension earned during the Government Service. She has also pointed out in respect of two cases one Gokuldass and Chandrasekaran wherein in respect of the Government Service rendered by them two separate pension has been paid, apart from the pension in respect of the Corporation service. She would conclude stating that by the administrative order a right accrued cannot be taken away, or even by a legislature. In the present case a benefit which has been directed to be given by the Supreme

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Court while exercising its powers under 142 of Constitution of India is sought to be taken away by an administrative order by the impugned G.O. which is not only opposed to the judgment of the Supreme Court but also against the concept of pension rules. Therefore, she would contend that the petitioners are entitled for the amount of pension separately in respect of the services rendered in Government Department along with interest.

30. On the other hand, the learned Advocate General would contend that when once the pension scheme was formulated by the State Transport undertaking for the State Transport Corporations as per the settlement arrived at under Section 12(3) of the Industrial Disputes Act with effect from 01.09.1998, which has introduced the pension scheme, it covers all employees including employees who have been absorbed from Tamil Nadu State Transport Department. In cases where the Tamil Nadu State Transport Department employees are not eligible for pension for the service rendered in the Tamil Nadu State Transport Department, such service will be taken into account taking a companionate view for available pensionable service provided they remit tax or any benefits in lieu of pension together with interest. The total eligible service is restricted to 30 years, the difference between gross pension and amount already received by individual for the service rendered with previous employer or the pension eligible under the scheme whichever is lesser shall be the eligible pension and based on the said settlement the State Transport Corporations Pension Fund Rules were approved with effect from 01.09.1998 in G.O.Ms.No.135 Tamil Nadu State Transport Department dated 15.12.2000. According to the learned Advocate General, while framing the scheme by the Corporations, the service rendered in the Government Department has been taking into consideration and it was only based on the entire service rendered both in the department as well as in the Corporation, the Corporation pension scheme contemplated the pension benefits. While so, the respondents cannot be directed to the again take the services of the petitioners rendered in the Tamil Nadu State Transport Department and pay separate pension for that also. When once the entire services has been taken into account for fixing a comprehensive pension for which the most of the employees have given their consent and the pensionary benefits has been arrived at accordingly, there is no question of again paying pension for the Government Service for the second time. This according to the learned Advocate General hits Rule 7 of the Tamil Nadu Pension Rules, which prohibits the double pension. The learned Advocate General also would rely upon the rule 2(b)(ii) and 14(b) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rule and would submit that the argument of the learned counsel for the petitioners would mean that the Government is compelling to pay pensions for the second time for the same service rendered.

31. While it is admitted by the learned Advocate General that the payment of pension under the Employees Provident Fund scheme was a compulsion and the old service pension rule is different, the pension scheme under the Corporation which has framed is by virtue

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of consent of parties entered by way of settlement under Section 12 (3) of the Industrial Disputes Act, and binding upon all the parties. According to him, when once the entire issue is involved in their settlement, no employee is entitled for any other benefits other than that is covers under the settlement. In the present case inasmuch as the Corporation scheme takes into account the services rendered in the Tamil Nadu State Transport Department also, there is no question of once against separating the services rendered in the Corporation Department. It is also the contention of the learned Advocate General that when the majority of the employees have accepted the 12(3) settlement and have been receiving pension, there is no purpose in the contention of the petitioners and unsettling that will only amount to make interference with the industrial harmony. The very fact that only few associations and one individual along has come to the court shows that majority of the workers are not interested in agitating against the Corporation Pension Scheme. In view of the same, learned Advocate General would contend that there is absolutely no substance in the writ petitions and they are to be dismissed.

32. I have heard the learned counsel for the petitioners as also the learned Advocate General and perused the entire records.

33. The facts connected with these cases relate to the judgment of the Honble Supreme Court rendered in Government of Tamil Nadu and others Vs. M.Ananchu Asari and others reported in 2003(10) SCC 503 and the subsequent judgment passed in the review application in the same case namely Government Tamil Nadu Vs. M.Ananchu Asari reported in 2005(2) SCC 332. The facts leading to these cases are: -

34. The Tamil Nadu State Transport Corporations were formed in the year 1972. Before formation of the said Transport Corporations the Transport was under the control of the Tamil Nadu State Transport Department, which was the Government Department. The Government servants belong to the said Tamil Nadu State Transport Department were transferred on deputation to the newly created Transport Corporations from 1972 onwards. Except that there was a change of employer, the employees were working in the same places. Government passed G.O.Ms.No.378 Finance (FR.II) Department dated 18.04.1975, under which orders were issued regarding terminal benefits to the Government servants absorbed under the state owned Corporations. In respect of the payment of pension/gratuity, the said G.O. was to the following effect:

> "Pension & Gratuity
>
> In addition to pay in the public undertaking, an optee will be entitled to pension/gratuity earned by him in Government service prior to such absorption. If the qualifying service under Government is less than ten years, gratuity and Death-cum-Retirement Gratuity alone will be payable. They are permitted to draw their pension/gratuity immediately on absorption in the Corporation."

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35. Therefore, according to the said G.O. the pension/gratuity earned by the Government servants before his absorption in the Transport Corporations was permitted to be drawn on absorption in the Corporations. However, the said G.O. was kept in abeyance and subsequently G.O.Ms.No.284 Finance (CFC) Department dated 31.03.1980 came to be issued. That was an order revising the G.O.Ms.No.378 dated 18.04.1975. Under the said G.O. the crucial date in respect of the employees of State Transport Corporations for calculating the terminal benefits was fixed as 01.05.1975 while in respect of all other state Public Sector Corporations, it was the date from which the employee, is continuously working in the Corporations or the date of incorporation of the Corporation whichever was later. Further, under the said G.O. the pension in respect of such absorbed employees in the state owned Corporations are payable by the State Government only on the retirement of the employees on the public sector Corporations and accordingly the payment of pension due to the services rendered in the Government Department was kept under suspension during the employment in the Corporations. It appears that the employees of the Tamil Nadu State Transport Department are deemed to be discharged from service if they have not exercised option before 28.02.1982 and there was no question of retaining them in the Government Department and therefore options appeared to have been exercised by the employees to go to Transport Corporations. However, it is the contention of the petitioners that such option was not voluntary, since there was no option to be retained in the Department and failure to give option will only result in termination. The G.O.Ms.No.284 dated 31.03.1980 came to be challenged in two writ petitions in W.P.No.1917 and 1928 of 1980 and by an order dated 18.01.1983 the said G.O. was struck down in so far as it takes away the benefits given under G.O.Ms.No.378. Subsequently, the government passed another G.O. in G.O.Ms.No.1028 Transport Department dated 23.09.1985 issuing revised order regarding the settlement of terminal benefits. As per the said G.O. which stated that the Tamil Nadu State Transport Department was wound up with effect from 14.09.1975 and all the employees of the erstwhile Tamil Nadu State Transport Department were absorbed permanently in the various Transport Corporations based on the options exercised by the employees and in respect of the erstwhile Tamil Nadu State Transport Department employees working in various Transport Corporations, the terminal benefits were directed to be paid as per the first G.O. namely G.O.Ms.No.378 Finance dated 18.04.1975. It was as per the said G.O.Ms.No.1028 dated 23.09.1985, in addition to the implementation of the G.O.Ms.No.378 dated 18.04.1975, the optee was made entitled to pension (pension/gratuity) earned by him in Government Service prior to absorption as per the Madras Liberalized Pension Rules, 1960. However, in the said G.O. it was stated that the crucial date namely 01.05.1975 as fixed in G.O.Ms.No.284 dated 03.01.1980 would continue to prevail. The relevant portion of the said G.O.Ms.No.1028 dated 23.09.1985 in this regard is as follows: -

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"2. The Government on re-examination of the whole issue, have now decided that in respect of the absorption of all erstwhile Tamil Nadu State Transport Department employees in the various Transport Corporations their Terminal Benefits should be settled as per the orders is read in G.O.Ms.No.378, Finance, dated 18.04.1975 with procedural modifications set out as below:

3. The Government having examined the issues relating to terminal benefits afresh, issue the following orders. The employees of the erstwhile Tamil Nadu State Transport Department who were absorbed in the various Transport Corporations will be given the following benefits:

In addition to pay in the public undertakings, an optee will be entitled to pension/gratuity earned by him in Government service prior to such absorption as per Madras Liberalized Pension Rules 1960. They are permitted to draw their pension/gratuity from the date of their permanent absorption in the Transport Corporations. The arrears of monthly pension from the date of their permanent absorption till date or the lumpsum amount based on the commuted value of pension according to their option shall be paid immediately in respect of retired/legal heirs of the deceased employees."

36. The further provisions of the said G.O. which are relevant for the purpose of this case are:

"In addition to pay in the public undertakings, an optee will be entitled to pension/gratuity earned by him in Government service prior to such absorption as per Madras Liberalized Pension Rules 1960. They are permitted to draw their pension/gratuity from the date of their permanent absorption in the Transport Corporations. The arrears of monthly pension from the date of their permanent absorption till date or the lumpsum amount based on the commuted value of pension according to their option shall be paid immediately in respect of retired/legal heirs of the deceased employees."

37. By applying the said cut-off date when some of the petitioners were unable to get eligibility for pensionary benefits they filed W.P.No.6969 of 1990 in this Court and this Court in the order dated 09.01.1992 has held that cut-off date of 01.05.1975 fixed in G.O.Ms.No.1028 was illegal, since the petitioners are asked for option till 1982. It was on that basis this court has struck down that portion of the G.O.Ms.No.1028 in fixing the cut-off date and left it open to the Government to take into consideration the services of the petitioners by fixing a fresh cut-off date. Similar order was passed in another writ petition

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also namely in W.P.No.7012 of 1998, wherein option stated to have been asked by the Transport Corporations was found out i.e. 20.06.1982. On the Government filing writ appeal in writ appeal No.522 of 1992, the Division Bench of this court in the judgment dated 16.09.1997 has confirmed the judgment of the learned single judge. It was as against the said judgment the respondents herein have filed special leave petition before the Honble Apex Court and that was the decision of the Apex Court in the Government Tamil Nadu Vs. M.Ananchu Asari reported in 2003(10) SCC 503. It was the specific contention before the Apex Court on behalf of the Government that 01.05.1975 was the actual date of absorption, even though subsequent opportunities were given to employees to exercise their option in the year 1982 and therefore it cannot be said that options were exercised till February 1982. This contention raised on behalf of the respondents was specifically rejected by the Honble Apex Court. The Apex Court while dealing with this has held as follows:

> "13. We find it difficult to accept the contentions advanced by the appellants' counsel. The learned counsel has not disputed the proposition that the cut-off date fixed by the Government for the purpose of conferring the pensionary benefits cannot be arbitrary or whimsical. Even according to the appellants, the date of permanent absorption in the service of the Corporation is a material date and it is in the light of that factor that the cut-off date was fixed as 01.05.1975. The stand taken in the counter-affidavit filed on behalf of the Government of Tamil Nadu in Writ Petition No.6969 of 1990 is that the writ petitioners were absorbed in Kattabomman Transport Corporation with effect from 01.05.1975 on the basis of the options exercised by them and that their deputation ended on 30.04.1975. That is how the choice of the date 01.05.1975 is sought to be justified. In other words, the fixation of cut-off date is sought to be linked up with the completion of the process of absorption. A perusal of GOs Nos.1028 and 250 would also make it clear that the Government wanted to fix the date for pensionary entitlement to coincide with the date of permanent absorption. The criterion cannot be said to be irrational or irrelevant. But, the question is whether this factual premise that the process of absorption took place in the year 1975 is correct. Viewed in the light of G.O.Ms.No.284 dated 31.03.1980 and the subsequent actions taken by the management of the State Transport undertakings, it cannot be said with certitude that the process of absorption was completed even in the year 1975. If, in fact, the process was completed by April 1975, the pertinent question would be why fresh options were directed to be called for in the year 1980 and actually called for in January 1982 and thereafter? G.O.Ms.No.284 dated 31.03.1980 clearly stipulates that fresh options shall be obtained from the government servants working in various corporations/boards."

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38. Having come to the conclusion that the process of absorption was not completed on 01.05.1975 and even by a subsequent G.O. in G.O.Ms.No.284 a fresh option have been asked for and it went upto 1982, in the final paragraph of the judgment the Supreme Court has held as follows:

> "16. For the reasons aforesaid, we find no merit in these appeals. The judgment of the High Court is upheld. However, the High Court while indicating that the last date for submitting the options finally should have been taken as the basis for fixation of date, gave a direction to the Government to fix the relevant date in the light of the observations made in the judgment. The High Court proceeded on the basis that it was only on 20.06.1982 and thereafter, that the options were called for. We are of the view that in view of the long lapse of time and in order to avoid further delay and the scope for possible controversies, instead of leaving it to the Government to fix a fresh cut-off date as per the directions of the High Court, in exercise of our powers under Article 142 of the Constitution, we direct that the date 01.04.1982 shall be adopted as the cut-off date in modification of what was prescribed in GO No.1028 dated 23.09.1985 and GO No.250, dated 18.11.1996. The reason for selecting the said date is that the Commissioner and Secretary to Government, Transport Department by his letter dated 05.01.1982 addressed to the Managing Directors of all State Transport undertakings requested them to obtain fresh options by 28.02.1982. The memo issued by the Managing Director of KTC Ltd. dated 11.01.1982 makes it clear that the last date for exercise of options was fixed as 28.02.1982 in conformity with the Government's directive. The respective Corporations were supposed to finalise he options sometimes thereafter. It is reasonable to presume that PTC Ltd., and other Corporations would have also adhered to the same date. The High Court has referred to the note dated 20.06.1982 issued by the Managing Director of PTC (Metro) Ltd. But it does not fix the last date for submitting the options. It purports to give certain instructions as to the follow-up action to be taken with reference to the options received. Hence, the fixation of the cut-off date as 01.04.1982 would, in our view, be appropriate. Taking into account the aforementioned date for the purpose of assessing the requisite length of service, we direct the appellants to take steps to extend the pensionary benefits to the eligible employees. Having regard to the conduct of the respondents in seeking the remedy long after the options were exercised, we consider it just and proper to direct that the respondent employees whoever have retired should get the arrears of pension only from 01.01.1988, which date is fixed with reference to the year of filing the first writ petition, namely, W.P.No.7012 of 1988. The fixation of pension and payment of arrears should be done accordingly within a period of four months from today. The appellants are entitled to

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adjust the monetary benefits which the employees would not have received if they were to receive the pension."

39. Accordingly, in order to avoid any further delay by invoking the powers under 142 of the Constitution of India the Hon'ble Supreme Court has adopted 01.04.1982 as a cut-off date and ultimately directed the Government to take steps to expedite the pensionary benefits to the eligible employees but stating that the arrears of pension will be only from 01.01.1988 which is the date of filing of the first writ petition namely W.P.No.7012 of 1988 and accordingly directed the arrears of pension should be paid within a period of four months from the said date of the judgment which was on 29.10.2003.

40. Again not satisfied with the said judgment, the respondents have filed review petition before the Apex Court. Some of the grounds raised by the respondents in the review petition before the Supreme Court are relevant, one such ground as follows:

"3. It is submitted that this Hon'ble Court while disposing off the above appeals did not consider the following important aspects of matter. If the petitioners accepts the judgment of this Hon'ble Court and pay pension from 01.01.1988 as per the order, the Government will incur 110 crores which is one time payment and further recurring expenditure to the tune of Rs.10 crores per annum. This aspect has to be taken into consideration by way of deciding the above review petition. The employees are eligible for pension from the date of actual retirement on attaining the age of superannuation. In all other aspects the petitioner appellant accepts the judgment of this Hon'ble Court.

4. The petitioner submits that in the order dated 29.10.2003 this Hon'ble Court has held that:

"We consider it just and proper to direct that the respondent-employees whoever have retired should get the arrears of pension only from 01.01.1988 which date is fixed with reference to the year of filing the first writ petition namely W.P.No.7012 of 1988."

12. Though the pension scheme formulated by State Transport Undertakings for State Transport Corporations and G.O.was issued on 15.12.2000 with retrospective effect from 01.09.1998. This G.O.also mentioned that pension will be payable from the date of retirement from the Transport Corporation. True copy of the G.O.135 dated 15.12.2000 is annexed herewith as ANNEXURE-P2.

15. It is submitted that this Hon'ble Court in its judgment has held in para 5 that it is not in dispute that the service in the Corporation is non pensionable. As such it is submitted that whether the non-pensionable service from 01.05.1975 to 31.03.1982 (Corporation service registered under Companies Act) can be taken into account for the purpose of assessing the requisite the

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length of service with Government service to extend the pensionary benefits by fixing the cut-off date as 01.04.1982."

It is submitted that the respondent-employees whoever have retired should get the pension arrears only from 01.01.1988 by which this Hon'ble Court has passed an order that the cut-off date is 01.04.1982 and the pensionary benefit from 01.01.1988 for the retired employees. The petitioner most respectfully accepts the said judgment, but for the remaining employees whoever have retired on or after 01.01.1988 should be eligible for pension on the date of actual retirement on attaining the age of superannuation."

41. Therefore, the Government having accepted the judgment of the Supreme Court only has pleaded the financial constraint apart from the fact that in fact the Government has brought to the notice of the Hon'ble Apex Court about the pension scheme of the State Transport Corporations and the necessary G.O. issued on 15.12.2000 namely G.O.Ms.No.135 Transport Department. It was after considering the entire facts, the Hon'ble Supreme Court has dismissed the review petition filed by the Government on 01.02.2005 in Government of Tamil Nadu and others Vs. M.Ananchu Asari and others reported in 2005(2) SCC 332. The Honble Supreme Court has held as follows:

"3. Certain contentions are raised on the merits, especially, in regard to the conclusion of this Court that the process of absorption did not take place in 1975. We are not inclined to rehear the arguments on merits. If the petitioners failed to furnish the necessary material even during the pendency of appeal in this Court, that is no ground to review the judgment. There is also nothing to be clarified insofar as the operative part of the judgment is concerned. It is not necessary for us to express any view on the question whether the Transport Corporation employees who were erstwhile government servants retiring after 01.01.1988 would be eligible to get the pension in addition to the salary drawn by them in the Corporation, as per the Rules and GOs applicable to them. It is the contention of the learned counsel for the respondent employees that the GOs issued by the Government themselves contemplated such payment and in fact those who were parties to the earlier writ petitions were given that benefit. This issue cannot legitimately form the subject-matter of either review or clarification. Hence the review petitions are dismissed with the above observations. Time for implementation of judgment is extended by four months from today."

42. Therefore, while dismissing the review application and dealing with G.O.Ms.No.135 Transport Department dated 15.12.2000 wherein the Government in effect wanted a clarification that by

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virtue of the said G.O. persons who retired after 01.01.1988 would be eligible to get pension in addition to the salary drawn by them in the Corporations and in that regard the Apex Court has not expressed any opinion. The Apex Court has also directed that the judgment have to be implemented within four months time. In this context, it is relevant to point out that when the entire matter was pending before the Honble Apex Court by virtue of G.O.Ms.No.135 Transport dated 15.12.2005, the Government has framed the Tamil Nadu State Transport Corporation Employees Pension Fund Rules. Before the date of passing of the said scheme namely 15.12.2000, the Employees Pension Scheme applicable to the Transport Corporation Employees were the one in existence as contemplated under the Employees Provident Fund and Miscellaneous Provisions Act.

43. Admittedly, the State Transport Corporations Pension Fund Rules as framed G.O.Ms.No.135 Transport Department dated 15.12.2000 is a culmination of memorandum of settlement entered under Section 12(3) of the Industrial Disputes Act, 1947 reached before the Joint Commissioner of Labour (Conciliation), Chennai, on 13.02.1999 and also subsequent decision during various meetings. The relevant provisions of the memorandum of settlement, which relates to the pension is as follows:

> "18. A new Pension Scheme shall be framed for the Employees of Transport Corporations and the draft scheme will be sent to the Regional Provident Fund Commissioner for getting exemption and upon getting exemption, the employees recruited after 01.09.1998 shall come under the new pension scheme and as per the Employees Provident Fund Act, the employer's contribution of these employees will be remitted to the Pension Fund.
>
> 19. However the employees who are on the rolls of the State Transport Undertakings as on 31.08.1998 shall have the option of joining the new pension scheme or continue to be a member in the existing Employees Contributory Provident Fund Scheme. This exercise of giving option shall be completed within a period of 3 months from the date of signing this settlement subject to getting the exemption from the Regional Provident Fund Commissioner.
>
> Any option exercised for this purpose shall be final."

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44. Therefore, a reading of the said agreement shows that the scheme, which is to be formulated pursuant to the said agreement, should apply to the persons recruited in the Corporations after 01.09.1998 and after obtaining exemption from Regional Provident Fund Commissioner regarding the obligation to formulate pension scheme under the said Employees Provident Fund Regulation. It also states in paragraph 19 specifically that such option is sought to be completed within three months from the date of signing of the settlement in respect of the employees who were enrolled after

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31.08.1998 in the Transport Corporations. An option should be given to them either to join in the new pension scheme or continue to be a member in the existing Employees Contributory Provident Fund Scheme.

45. In pursuant to the said agreement the G.O.Ms.No.135 dated 15.12.2000 came to be passed and the Tamil Nadu State Transport Corporations Employees Pension Fund rule framed. Therefore, it is clear that the rules were framed as per the said G.O. are in lieu of the pension scheme which are otherwise bound to be followed by the Transport Corporations under the Employees Provident Fund Scheme. It is also not in dispute that the amount of pension payable are providing from the funds created under the Rules and not the consolidated fund, for the pension to Government servants are payable only from such funds. Therefore, it is clear that the Tamil Nadu State Transport Corporation Employees Pension Fund Rule created under G.O.Ms.No.135 dated 15.12.2000 is not akin to the pension payable to the Government servants.

46. As I have stated earlier, a reference to the 12(3) Settlement which is the basis of the present State Transport Corporation Employees Pension Rules shows that an option is to be called for among the employees of Tamil Nadu State Transport Corporations only in respect of the following of pension rule under the Employees Provident Fund Scheme or under the Tamil Nadu State Transport Corporation Employees Pension Fund Rules and that has nothing to do with the option exercised by the erstwhile Tamil Nadu State Transport Department Employees who have been subsequently absorbed to the State Transport Corporations about which the Supreme Court has already settled the issue once for all, treating the date of option as 01.04.1982 and the payment of monetary benefits from 01.01.1988. Even though an attempt is sought to be made in confusing the option in respect of these two cases, on fact it is clear that option for transferring the Tamil Nadu State Transport Department employees to that of the Transport Corporation Employees has never been an issued either under 12(3) Settlement and can never be read in the subsequent Tamil Nadu State Transport Corporation Employees Fund Rules framed pursuant to the said 12(3) Settlement.

47. Now coming under the Corporation Pension Scheme itself, the term "Actual Service" is relevant. The said term "Actual Service" is defined under 2(p) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, which is as follows:

> "p) The "Actual Service" as defined below shall be reckoned for calculating pensionable service:
>
> i) In respect of employee taken over at the time of nationalization during 1972, the date of the individual becoming regular employee with the taken over operators will be reckoned for calculation of pensionable service, provided they have been absorbed with continuity of service.

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ii) In respect of erstwhile Tamil Nadu State Transport Department employees, who were not eligible for the service rendered in the State Transport Department, such service will be counted taking a compassionate view for arriving pensionable service, provided they remit back the service gratuity or any benefit in lieu of pension together with interest compounded annually calculated at the rate of interest declared for the members by the PF Trust of respective STUs for the respective years to provide pension for TNSTD service. In respect of erstwhile TNSTD employees who were eligible for pension for service rendered in TNSTD; determination of their pensionable service and pension will be as per Rule 14(b).

(Amendment approved vide G.O.Ms.No.92, Transport Department, dated 24.08.2001)

iii) In respect of all other employees, the date of regular employment or becoming the member of the Employee's Provident Fund in the STU will be reckoned for the calculation of pensionable service."

Rule 8 and 9, which are also relevant which speak about the membership run as follows:

"8. The Pension Scheme is applicable to all the employees of the establishment who are on rolls as on 01.09.1998 or employed after that date and also members of the Employees Provident Fund Scheme.

In the case of outgoing employees prior to 01.09.1998, they shall be entitled to the benefits under the Employees Pension Scheme, 1995 through the Provident Fund Commissioner.

9. A member joining the Fund will authorize CPFC to transfer withdrawal benefit payable to him to the Fund of the fund, which shall continue full and final payment of liability from CPFC. In respect of employees, who are transferred / absorbed from other Tamil Nadu Public Sector Undertaking / Government Department / any pensionable organization, their past service will be counted, provided they remit the difference between the capitalized value of the pensionary benefits arrived as per the Rule of the Pension Trust and the amount received from the farmer employer. Otherwise, they become eligible for pension only from the date of absorption in the STUs."

48. This provision makes it very clear that in respect of employees transferred from the Government Department etc., the past services will be counted only if they remit the differences between the capitalized value of the pensionary benefits arrived as per the rules of pension trust and the actual amount received from the

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former employers, making it clear that if such remission is not made they will be eligible for pension only from the date of absorption into the State Transport Corporations. This is clearly possible only if everyone of the employee is given individual option to choose either of the above said benefits and the same is not automatic, especially, in the circumstance that the Hon'ble Supreme Court has already given the benefit of pension with cut-off date as 01.04.1982. The one other important provision of the said scheme is rule 14 which is as follows:

"14. DETERMINATION OF PENSIONABLE SERVICE

a) The pensionable service of the member shall be determined with reference to the contributions received or are receivable on his behalf in the Employees' Pension Fund, subject to the condition stated in para 13. The pensionable service shall be restricted to 30 years for the purpose of calculation of pensionary benefits.

b) If a member is eligible for pension under any other scheme, pension payable under scheme shall be calculated as follows:

Gross pension shall be calculated notionally including the period of pensionable service rendered with the previous employer. Total eligible service shall be restricted to 30 years. The difference between the gross pension and the amount already received by the individual for the service rendered with the previous employer or the pension eligible under the scheme whichever is less shall be the eligible pension under the scheme."

49. Therefore, a reading of Rule 14(b) makes it clear that in respect of a member of the State Transport Corporation eligible for pension and other scheme like that of the petitioners of-course in respect of their services rendered in the Government Department, the determination of pension is by notional calculation of gross pension including the pensionable service rendered with the previous employer however taking 30 years as a maximum period of service and there after the difference between the gross pension and the amount already received by individual for the service under the previous employer or pension eligible under the Transport Corporation scheme whichever is lesser, is eligible pension under the scheme. Therefore, it is clear that it is after deducting the amount of pension, which is receivable or received by an employee of the erstwhile Tamil Nadu State Transport Department, the balance amount from the gross pension alone, is payable as pension to the Transport Corporation employees only in respect of their service rendered in the Corporation. Merely because, for the purpose of arriving at a gross pension the service rendered in the Tamil Nadu State Transport Department as also the State Transport Corporation were taken together, it does not mean that the pensionary benefits earned from the Government while these employees were working in the Government Department were also taking into consideration. A

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reading of the said clause 14(b) makes it very clear that it is after deducting the amount of pension receivable from the Government in respect of the services rendered in the Government Department from the gross pension that is payable as a pension under the scheme only for the services rendered in the Transport Corporation and there is absolutely no ambiguity in the same.

50. Therefore, the contention raised on behalf of the respondents as if by virtue of this persons like petitioners are likely to get double pension for the period of service rendered in the Government Department has absolutely no legal basis to stand. As correctly pointed out by Mr.D.Sadhasivan and M/s.R.Vaigai along with illustration in respect of few of the employees which clearly show that while calculating the pension after deducting the Government pension under G.O.Ms.No.378, the remaining of eligible pension to the Tamil Nadu State Transport Department employees on the basis of which the computation was made. An extract in respect of one case as pointed by Mr.D.Sadhasivan is relevant. That relates to one K.Bakthavachalam

"Name - K.Bakthavatchalam
Designation - STM
EDP No. - TD 1798
DOB - 15.07.1942
DOA - 01.12.1961
DOR - 31.07.2000
PF A/c No. - 08622
Depot - Perambur Depot

Qualifying Service	YY-MM-DD	LLP	YY-MM-DD
PTC	25.02.30	PTC	00.08.05
Govt.	13.04.29	Govt.	00.03.05
	38.07.29		00.11.05
LLP	00.11.05		
	37.00.24		

Pension Calculation:

Last Basic Pay	Rs.5470
	5470/2 = 2735
(Less) 378 pension(Govt.Pension)	= 1275
Eligible Pension	= 1460

Commutation:
1460/3 = 487 X 10.46 X 12 = 61128/-"

51. Therefore, even after the introduction of the Tamil Nadu State Transport Corporation Employees Provident Fund Rules by G.O.Ms.No.135 dated 15.12.2000, in my considered view, the benefits conferred to the erstwhile Tamil Nadu State Transport Department employees transferred to the Tamil Nadu State Transport Corporations by G.O.Ms.No.1028 dated 23.09.1985 continues to be in operation, of course without reference to the cut-off date mentioned therein which has been set aside. Now, it is based on

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the said provisions of the Tamil Nadu State Transport Corporation Employees Provident Fund Rules, especially relating to rule 2(p)(ii) and rule 14(b), the impugned G.O.Ms.No.42 Transport Department dated 27.05.2005 is sought to be issued. While referring to the judgment of the Hon'ble Supreme Court and also clearly making out that the Government has decided to implement the orders of the Supreme Court of India, the Government passed the said G.O. out which clause 5(a)& (b) alone are relevant for the purpose of this case, since it is the clause 5(b) which is impugned in these writ petitions. Clause 5 states as follows:

> "5. The Government after re-examination of the whole issue have decided to implement the orders of the Supreme Court of India, referred in the judgment seventh read above and accordingly issue the following orders:
>
> The Government fix the cut-off date as 01.04.1982 in respect of the erstwhile Tamil Nadu State Transport Department employees who had put in less than 10 years of government service as on their permanent absorption in State Transport Undertakings, only for the limited purpose of assessing the requisite length of qualifying service of 10 years to each pension. The eligible erstwhile Tamil Nadu State Transport Department Employee whoever have retired shall get the arrears of pension only from 01.01.1988 which date is fixed with reference to the year filing the first writ petition. The fixation of pension and payment of arrears shall be done accordingly as ordered by the Hon'ble Supreme Court of India as per the rules and Government Orders applicable to them in the following manner:
>
> a) The erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired before 01.01.1988 or after 01.01.1988 but before 01.09.1998 be paid pension if they had put in the qualifying service of 10 years as on 01.04.1982. Period of Daily paid services, leave on loss of pay and suspension treated as specific punishment should be excluded while arriving the net qualifying service.
>
> b) As per the clause 2(p)(ii) & clause 14(b) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules issued in G.O. fourth read above and with reference to Rule 7 of the Tamil Nadu Pension Rules the erstwhile Tamil Nadu State Transport Department employees who were absorbed in Tamil Nadu State Transport Corporations and retired after 01.09.1998 be paid pension as per the Pension Scheme of the State Transport Corporations brought into force by the settlement under Section 12(3) of the Industrial Disputes Act, 1947 and they are not eligible for the second pension as per the G.O. third read above."

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52. The said paragraph 5(b) of the impugned G.O. proceeds on the assumption that the calculation of pension as per rule 14(b) of the Tamil Nadu State Transport Corporation Employees Pension Fund Rules, contemplate payment of second pension as per G.O.Ms.No.1028 dated 23.09.1985. As I have narrated above, this aspect of the impugned G.O. is a total misnomer and without appreciation of either the provisions of 12(3) Settlement or clause 14(b) of the Tamil Nadu State Transport Corporation Employees Pension Fund rules itself. As far as the rule 7 of the Tamil Nadu Pension Rules is concerned, there is absolutely no difficulty in coming to a conclusion that in respect of the same service rendered in the same establishment there cannot be two pension, but in the present case as I have illustrated above and also a reading of clause 14(b) of the Tamil Nadu State Transport Corporation Employees Pension Rules clearly contemplate that only for the purpose of arriving at a gross pension the total service rendered in the Tamil Nadu State Transport Department as well as the Transport Corporation were taken together and there after the amount of pension eligible for the service rendered in the Tamil Nadu State Transport Department namely the Government Department is deducted and the balance amount is arrived at. That is also in consonants with the provisions of the memorandum of settlement entered under section 12(3) of the Industrial Disputes Act, the relevant provision of which namely clause 18 and 19 of the said agreement I am reproducing again for the risk of repetition but for better appreciation of the facts:

> "18. A new Pension Scheme shall be framed for the Employees of Transport Corporations and the draft scheme will be sent to the Regional Provident Fund Commissioner for getting exemption and upon getting exemption, the employees recruited after 01.09.1998 shall come under the new pension scheme and as per the Employees Provident Fund Act, the employer's contribution of these employees will be remitted to the Pension Fund.
>
> 19. However the employees who are on the rolls of the State Transport Undertakings as on 31.08.1998 shall have the option of joining the new pension scheme or continue to be a member in the existing Employees Contributory Provident Fund Scheme. This exercise of giving option shall be completed within a period of 3 months from the date of signing this settlement subject to getting the exemption from the Regional Provident Fund Commissioner.
>
> Any option exercised for this purpose shall be final."

53. In addition to that even a working sheet produced by learned Advocate General in respect of one employee R.Shanmugam also makes it clear that there is absolutely no ambiguity. The working sheet which contains as follows:

"Working sheet showing pension payment as per Rule 14(b) in respect of TNSTD employee

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Name	:R.Shanmugam	Designation	:SG.Asst,A13722
Date of Birth	:01.07.1947	Date of Appointment	:28.09.1965
Date of Exit	:30.06.2000	Date of absorption in Corporation	:01.05.1975

Total Qualifying Service including TNSTD service		Total Qualifying Service in the Corporation only (Under the Scheme)	
	yyyy-mm-dd		yyyy-mm-dd
	2000.06.30		2000.06.30
	1965.09.28		1975.05.01
	34.09.02		25.01.29
LLP	0. 0. 0	LLP	0. 0.12
	34.09.02		25.01.17

Net Qualifying Service:35 years Pay as on (06/2000):Rs.6220/- Full Pension: 6220 X 30 2 X 30 =Rs.3310 Less GO 1028 Pension (-) =Rs.1275 =Rs.1835 (A)	Net Qualifying Service: 25 years Pay as on (06/2000):Rs.6220/- Full Pension: 6220 X 25 2 X 39 =Rs.2592(B)

54. The working sheet which contains the gross pension taking into consideration service rendered in both Government Department as well as Transport Corporation which comes to 35 years of service wherein the maximum period of 30 years is taken into consideration and after deducting the pension eligible under G.O.Ms.No.1028 namely Rs.1275/-, the balance amount arrived at Rs.1835/-, which is in accordance with clause 14(b) of the Tamil Nade State Transport Employees Pension Fund Rules.

55. On the other hand, in respect of the same employee service rendered by him in the Transport Corporation alone is taken as 25 years and for that purpose the pension to which is eligible is arrived at Rs.2,592/-. By applying the impugned G.O. especially clause 5(b), the Government's contention is that the said employee will be eligible either Rs.1,835/- as per rule 14(b) or Rs.2,592/- that is the pension exclusively for the service rendered in the Corporation whichever is less namely Rs.1,835/-. This is a total misconception as I have stated earlier. The reason being that by calculating 35 years of service both including in the Government Department as well as the Transport Corporation, the pension received in the Tamil Nadu State Transport Department as per the G.O.Ms.No.1028 namely Rs.1,275/- is deducted that as per clause 14 (b) of the scheme. The remaining amount of Rs.1,835/- should be taken as the pension amount due for the Corporation Service alone. On the other hand, by taking strictly in the Corporation Service alone the Employee is entitled for the pension of Rs.2,592/-. That amount of Rs.2,592/- does not include the period of service rendered by the employee in the Tamil Nadu State Transport

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Department. Therefore, by paying the amount of Rs.1,275/- which is the pension to which he is eligible for the service rendered in the Government Department before his absorption into the Transport Corporations along with the pension amount of Rs.2,592/- namely the pension accrued to him for the service rendered exclusively in the Transport Corporations, one can never come to a conclusion that this would amount to the payment of double pension and therefore hit by rule 7 of the Tamil Nadu Pension Rules.

56. It is not open to the respondents to contend as if the impugned G.O. should be taken as a policy of the Government, on the face of it I do not see that it is a policy since admittedly the impugned G.O. itself is a culmination of the agreement entered under 12(3) of the Industrial Disputes Act. Therefore, in any event as I have narrated that there is absolutely no reason to misinterpret the terms of clause 14(b) of the Tamil Nadu State Transport Corporation Employees Pension Rules and G.O.Ms.No.1028 dated 23.09.1985 as if there is conflict along with rule 7 of the Tamil Nadu Pension Rules, since it contemplates the double pension. The assumption is unfounded. In any event even assuming that it is a policy, it is well settled that if a policy is perverse it is not as if the concept of judicial review should not be extended.

57. As it has been laid down by the Hon'ble Apex Court in Saurabh Chaudri (Dr.) and others Vs. Union of India and others reported in 2004(5) SCC 618, wherein the judicial review is extendable in cases where even the policy is unreasonable. In this regard, as correctly pointed out by the learned counsel for the petitioners it is also relevant to refer about the judgment of the Hon'ble Apex Court in D.S.Nakara and others Vs. Union of India reported in 1983(1) SCC 305, while asserting the right of pension of the retired employees is a matter of right. The Hon'ble Supreme Court has held:

> "20. The antequated notion of pension being a bounty, a gratuitous payment depending upon the sweet will or grace of the employer not claimable as a right and, therefore, no right to pension can be enforced through Court has been swept under the carpet by the decision of the Constitution Bench in Deokinandan Prasad Vs. State of Bihar wherein this Court authoritatively ruled that pension is a right and the payment of it does not depend upon the discretion of the Government but is governed by the rules and a government servant coming within those rules is entitled to claim pension. It was further held that the grant of pension does not depend upon anyone's discretion. It is only for the purpose of quantifying the amount having regard to service and other allied matters that it may be necessary for the authority to pass an order to that effect but the right to receive pension flows to the officer not because of any such order but by virtue of the rules. This view was reaffirmed in State of Punjab Vs. Lqbal Singh.

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29. Summing up it can be said with confidence that pension is not only compensation for loyal service rendered in the past, but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings. One such saving in king is when you given your best in the hey-day of life to your employer, in days of invalidity, economic security by way of periodical payment is assured. The term has been judicially defined as a stated allowance or stipend made in consideration of past service or a surrender of rights or emoluments to one retired from service. Thus the pension payable to a government employee is earned by rendering long and efficient service and therefore can be said to be a deferred portion of the compensation or for service rendered. In one sentence one can say that the most practical raison d'etre for pension is the inability to provide for oneself due to old age. One may live and avoid unemployment but not senility and penury if there is nothing to fall back upon."

58. In view of the above said categoric position, I am of the considered view that the impugned G.O. in respect of G.O.Ms.No.42 dates 27.05.2005 particularly in relation to clause 5(b) is to be held as unconstitutional and accordingly clause 5(b) is set aside and the respondents are directed to pay pension to all the employees of State Transport Corporations retired after 01.09.1998 for the service rendered in the Tamil Nadu State Transport Department as per G.O.Ms.No.378 dated 18.04.1975 read with G.O.Ms.No.1028 dated 23.09.1995 and as held by the Hon'ble Apex Court in the judgment reported in 2003(10) SCC 503 with interest at the rate of 9% per annum and the entire arrears shall be paid within a period of four months from the date of the receipt of the copy of the order.

The writ petitions stand allowed in the above terms. No Costs. Consequently, connected W.P.M.Ps. are closed.

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Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Special Commissioner and
   Secretary to Government,
   Government of Tamil Nadu,
   Transport (RW) Department,
   Fort St. George,
   Chennai 600 009.

2. The Secretary to Government
   Transport Department,
   The State of Tamil Nadu,
   Fort St.George,
   Chennai 600 009.

3. The Secretary to Government,
   Finance Department,
   The State of Tamil Nadu,
   Fort St. George, Chennai 600 009.

4. The Director of Treasuries & Accounts,
   Panagal Building, Jennis Road,
   Saidapet, Chennai 600 015.

5. The Director of Pension,
   Pension Pay Office,
   No.807, V Floor, Anna Salai,
   Chennai. 6

6. The Managing Director,
   The State Express Transport Corporation Ltd.,
   Pallavan Salai,
   Chennai 600 002.

1 cc to Mr.D.Sadhasivan, Advocate, sr. 45564
1 cc to Mr.D.S. Rajasekaran, advocate, Sr.45747
1 cc to Mr.R. Vaigai, Advocate, sr. 45596
3 ccs to the Government Pleader , Sr. 45507, 45508, 45509

W.P.Nos.5856, 6891
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